

REMARKS

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,753,241 (“Ribier I”) in view of U.S. patent 5,130,122 (“Tabibi”) and J. Colloid & Interface Science (“Kenji”) as evidenced by U.S. patent 6,669,849 (“Nguyen”). In view of the following supplemental comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

Initially, Applicants note that Kenji is not prior art to the present invention. Kenji was published in 2001. The present application claims priority from a U.S. application (Serial no. 09/460,092) filed December 13, 1999, and a French patent application filed December 14, 1998. Accordingly, consideration of Kenji as prior art is improper.

The remaining references neither teach nor suggest the claimed invention. In particular, none of the remaining references teaches or suggests the required surfactant.

The Office Action recognized that Ribier I does not teach nanoemulsions containing the required surfactants or nanoemulsions having the required turbidity. (Office Action, page 3).

Tabibi contains a general reference to “surfactants” but does not contain a specific disclosure of the required surfactants as recognized at page 4 of the Office Action.

Nguyen also fails to disclose the required surfactants. It has been cited merely for its disclosure of water samples having floc size of 1-2 mm and turbidity of 3.6.

None of the applied art teaches or suggests adding the required solid surfactants to nanoemulsions having at least one oil having a molecular weight of greater than 400. The

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Office Action recognized that Ribier I does not disclose the claimed surfactant. Similarly, the Office Action recognized (at page 4) that Tabibi neither teaches nor suggests the required solid surfactants. Finally, Nguyen neither teaches nor suggests the claimed surfactants. Because the required surfactant is completely missing from these references, the combination of these references cannot yield the claimed nanoemulsions.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Even assuming that a *prima facie* case of obviousness has been set forth -- which as explained above is not the case -- sufficient evidence of unexpected results exists to overcome this rejection, and the rejection should be withdrawn for this reason as well.

More specifically, the previously-submitted Rule 132 declaration demonstrates that Comparative Composition A containing a liquid sugar surfactant was unstable after 1 month increased turbidity, particularly at increased temperatures. Also, after 2 months, the composition was completely unstable, making turbidity measurements impossible.

In stark contrast, Invention Compositions B and C containing solid sugar surfactant were stable, even after 2 months, and these compositions had low and stable turbidity characteristics, even at increased temperatures.

This vast difference in physical properties among Comparative Composition A and Invention Compositions B and C was surprising and unexpected given the similarity of the compositions (the only noticeable difference being the use of a solid sugar surfactant as opposed to a liquid sugar surfactant).

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Thus, the benefits associated with the claimed invention requiring the presence of a solid sugar surfactant are unexpected and surprising, and could not have been suggested by the remaining applied art. In other words, one of ordinary skill in the art, seeking to produce a nanoemulsion, would not have been motivated to use a solid sugar surfactant in the nanoemulsion with the expectation or belief that a stable, unturbid nanoemulsion would result -- such results were surprising and unexpected. Accordingly, the claimed invention cannot be obvious over the applied art.

For all of the above reasons as well as the reasons set forth in their November 2008 response, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

The Office Action also objected to the oath/declaration, asserting that correct citizenship of the inventors has not been indicated. Applicants respectfully submit that such citizenship has been properly indicated. French citizenship properly identifies the inventors as being from France. That the oath/declaration is sufficient is evidenced by the fact that the same declaration was submitted in the parent case, U.S. patent application serial no. 09/460,092, and the parent case issued as U.S. patent 6,689,371. Clearly, the oath/declaration was sufficient for the parent case, meaning that it is sufficient for the present application as well.

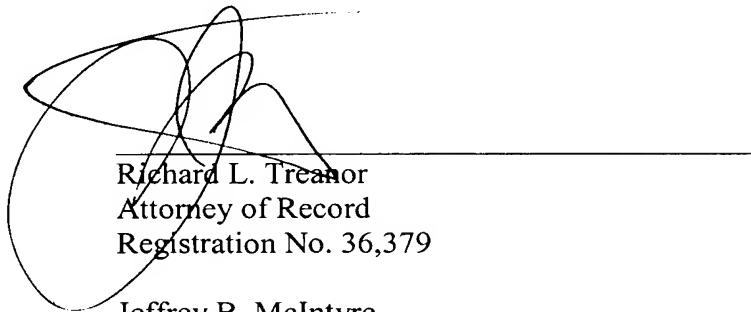
In view of the above, Applicants respectfully request reconsideration and withdrawal of the objection to the oath/declaration.

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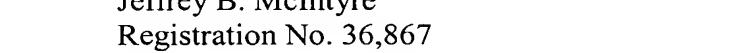
Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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